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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,500	01/16/2001	John H. Schneider	769-275	5911
29540	7590	11/18/2004	EXAMINER	
			PASCUA, JES F	
		ART UNIT		PAPER NUMBER
		3727		

DATE MAILED: 11/18/2004

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/761,500

Filing Date: January 16, 2001

Appellant(s): SCHNEIDER ET AL.

Ronald E. Brown
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 29, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of issues 2-6 in the brief is correct.

Appellant's brief presents arguments relating to the specification being objected to as failing to provide antecedent basis for the claim term "distal end". This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

(7) *Grouping of Claims*

The rejection of claims 1-4 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,224,779	THOMPSON et al.	07-1993
5,713,669	THOMAS et al.	02-1998
6,131,369	AUSNIT	10-2000
6,412,254	TILMAN et al.	07-2002

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thompson et al. This rejection is set forth in a prior Office Action, mailed on 04/20/2004.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Tilman et al. This rejection is set forth in a prior Office Action, mailed on 04/20/2004.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilman et al. in view of Thomas et al. This rejection is set forth in a prior Office Action, mailed on 04/20/2004.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit in view of Thomas et al. This rejection is set forth in a prior Office Action, mailed on 04/20/2004.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. This rejection is set forth in a prior Office Action, mailed on 04/20/2004.

(11) Response to Argument

In response to appellant's argument that the configuration of the Thompson et al. reference would not allow for use of a slider, it is noted that the feature upon which applicant relies (i.e., slider) is not recited in appealed claim 1. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding appellant's argument that the closed edge 18 of Tilman et al. is "created by folding the web, rather than by a seal", the Examiner has pointed in the final Office action, mailed 04/20/2004, that column 7, lines 46-48 of Tilman et al. discloses, "In some embodiments, tamper evident structures can use principles described in U.S. Pat. No. 5,713,669, **incorporated by reference herein.**" (emphasis added). U.S. Pat. No. 5,713,669 (Thomas et al.) discloses that a fold or a peelable seal may connect wall segments, which extend above zipper profiles to each other. Therefore, the incorporation of the Thomas et al. reference into Tilman et al. anticipates the recitation, "said segment extending over said profiles' interlocking members and being sealed to an opposite one said segments thereby forming a seal, said seal providing a frangible connection to provide a tamper-evident feature for said reclosable package."

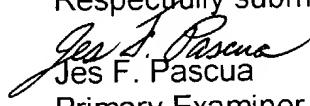
Regarding appellant's argument, "that the manufacturing processes of the Tilman and Thomas references are completely different..., these references have widely different configurations and their combination with regard to certain features would inevitably result in conflicts of purpose," it brought appellant's attention that the method of forming the device is not germane to the issue of patentability of the device itself. Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Thomas et al. suggests either tearing scores or perforations along the closed edge of wall segments or peeling the wall segments apart may access the slider of a package analogous to Tilman et al..

In response to appellant's argument that there is no suggestion to combine the Ausnit and Thomas et al. references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Thomas et al. suggests the slider of a package analogous to Ausnit may be accessed

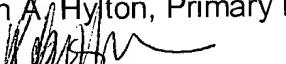
by either tearing scores or perforations along the closed edge of wall segments or peeling the wall segments apart.

Appellant's argument that forming the wall segments 36, 38 of Thomas et al. from package walls 12, 14 "is not an obvious variation by way of 'forming in one piece an article which has been formerly formed in two pieces and put together'" has been considered and deemed to be opinion. Appellant submits no evidence to prove that a person having ordinary skill in the would not be able to form the wall segments 36, 38 of Thomas et al. from package walls 12, 14.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP
November 17, 2004

Conferees
Robin A. Hylton, Primary Examiner

Stephen Kirk Cronin, Primary Examiner


PITNEY HARDIN LLP
7 TIMES SQUARE
NEW YORK, NY 10036-7311